

RULES OF
DEPARTMENT OF REVENUE

CHAPTER 810-3-32

Exemption of Certain Organizations, Associations, Etc.

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810-3-32-.01. Exempt Organizations.

(1) The following organizations are exempt from taxation as provided by § 40-18-32:

(a) Labor, agricultural or horticultural organizations. In order to be exempt, these organizations must have no net earnings inuring to the benefit of any member, and have as their objects the betterment of the conditions of those engaged in such pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective organizations. These organizations, otherwise exempt, are taxable on their unrelated business taxable income.

(b) Fraternal beneficiary societies, orders, or associations. A fraternal beneficiary society is exempt from tax only if operated under the "lodge system" or for the exclusive benefit of the members so operating. "Operating under the lodge system" means carrying on its activities under a form of organization that comprises local branches, chartered by a parent organization and largely self-governing, called lodges, chapters, or the like. In order to be exempt it is also necessary that the society have an established system for the payment to its members or their dependents of life, sick, accident, or other benefits.

1. To be exempt a fraternal beneficiary society must be operated in furtherance of its fraternal purposes and may not engage in business activities of a kind carried on for profit, except that the carrying on of activities which raise revenues from members and their guests, will not deprive the society of its exemption.

(c) Business league, chambers of commerce or boards of trade, not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual. A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. These organizations, otherwise exempt, are taxable upon their unrelated business taxable income.

(d) A civic league or organization may be exempt as an organization if it is not organized or operated for profit, and it is operated exclusively for the promotion of social welfare. An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community.

1. Clubs organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, no part of the earnings of which inures to the benefit of any private stockholder or members. In general, this exemption extends to social and recreation clubs which are supported solely by membership fees, dues, and assessments. However, a club otherwise entitled to exemption will not be disqualified because it raises revenue from members through the use of club facilities or in connection with club activities. A club which engages in business, such as making its social and recreational facilities available to the general public or by selling real estate (other than an incidental sale of property), timber, or other products, is not exempt.

(e) Farmers' and other mutual hail, cyclone or fire insurance companies, mutual ditch or irrigation companies, or like organizations of a purely local character, the income of which consists solely of assessments, dues and fees collected from members for the sole purpose of meeting expenses. An organization of a purely local character is one whose business activities are confined to a particular community, place, or district, irrespective, however, of political subdivisions. If the activities of an organization are limited only by the borders of a state, it cannot be considered to be purely local in character.

(f) Cooperative associations engaged in the marketing of farm products for farmers, fruit growers, livestock growers, dairymen, etc., and turning back to the producers the proceeds of the sales of their products less the necessary operating expenses, on the basis of either the quantity or the value of the products furnished by them, are exempt from income tax. If the proceeds of the business are distributed in any other way than on such a proportionate basis, the association does not meet the requirements of the Code and is not exempt. In order to show its cooperative nature and to establish compliance with the requirement of the Code that the proceeds of sales, less necessary expenses, be turned back to all producers on the basis of either the quantity or the value of the products furnished by them, it is necessary for such an association to keep permanent records of the business done both with members and nonmembers.

(g) Federal land banks and national farm loan associations as provided in Section 26 of the Act of Congress approved July 17, 1916, entitled "An act to provide for agricultural development, to create standard forms of investment based upon farm mortgages, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create government depositories and financial agent for the United States, and for other purposes."

(h) All national banks and national banking associations and all corporations engaged in the business of banking and of conducting a financial business employing moneyed capital coming into competition with the business of national banks during and for the periods during which such national banks and corporations are subject to an excise tax imposed by this state on or with respect to their respective incomes.

(l) Building and loan associations, substantially all the business of which is confined to making loans to members.

(j) Insurance companies upon which the statutes of Alabama impose a tax upon their premium income.

(k) Code Section 40-18-25 and regulations thereunder, provide that certain trusts are exempt from taxation under this chapter.

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810-3-32-.01.01 Political Organizations.

(1) A “Political Committee” as defined in Section 17-22A-1, et seq., Code of Alabama 1975, is “any political committee, club, association, principal campaign committee, political party, or other group of one or more persons which receives or anticipates receiving contributions or makes or anticipates making expenditures to or on behalf of any elected official, proposition, candidate, principal campaign committee or other political committee.”

(2) The above defined organizations are taxable for Alabama tax purposes to the same extent and in the same manner as any other entity that exceeds the protection afforded by P.L. 86-272.

(a) This rule is effective for tax periods beginning after June 9, 1999.

Author: Michael E. Mason, CPA, Jack Frost
Authority: Sections 40-2A-7(a)(5) and 17-22A-1, Code of Alabama 1975
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810-3-32-.02. Proof of Exemption.

(1) (a) An organization is not exempt from tax merely because it is not organized and operated for profit. It must establish its exemption by filing an affidavit showing the character of the organization, the purpose for which it was organized, its actual activities, the sources of its income and the disposition of such income, whether or not any of its income is credited to surplus or may inure to the benefit of any private shareholder or individual, and in general all facts relating to its operations which affect its right to exemption. To the affidavit shall be attached a copy of the articles of incorporation, declaration of trust, or other instrument of similar import, setting forth the permitted powers or activities of the organization, the by-laws or other code or regulations, and the latest financial statement showing the assets, liabilities, receipts, and disbursements of the organization.

(b) In addition to the information specifically called for in the preceding subparagraph, the Department may require additional information necessary for a proper determination of entitlement to an exemption pursuant to § 40-18-32.

(c) The status of a corporation claiming exemption under Sec. 40-18-32 will be determined by the Department on the basis of the facts in each individual case, and the taxpayer will be notified of the findings of the Department. The exemption statute will be strictly construed, and an organization not qualifying under a specific subsection of Sec. 40-18-32 will be held to be subject to tax.

(d) If an organization is exempt under both federal and state law, approved federal forms establishing exemption for federal income tax purposes will be acceptable as proof of exemption for state income tax purposes.

(2) Subject to revocation as a result of changes in the law, regulations, or other good cause, an organization that has once established its exemption may rely upon this determination and need not reestablish its exemption so long as there are no substantial changes in the organization's character, purposes, or methods of operation.

(3) This exemption does not extend to unrelated business taxable income of an exempt organization. See Reg. 810-3-32-.03.

(4) An organization is organized exclusively for one or more exempt purpose only if its articles of organization:

(a) limit the purposes of such organization to one or more exempt purposes; and

(b) do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

(5) An organization will be regarded as "operated exclusively" for one or more exempt purpose only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Sec. 40-18-32; and no more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

(6) The Federal Internal Revenue Code contains provisions similar to those in this section. Decisions and interpretations of the federal courts and agencies will be given due weight in interpreting this section.

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810-3-32-.03. Unrelated Business Taxable Income.

(1) Any organization specified in subdivisions (1), (2), (3), (4), (5), (6), (7), (11), and (12) of subparagraph (a) of § 40-18-32 which receives "unrelated business taxable income" (as defined in 26 U.S.C. § 512) is not exempt from taxation on such income. Any organization which receives unrelated business taxable income must comply with the provisions of §§ 40-18-2, and -31, and file the appropriate income tax returns and pay any tax due.

(2) Except for organizations described in § 40-18-32(a)(5), the term "unrelated business taxable income" is defined as follows:

(a) The gross receipts from any "unrelated trade or business" regularly carried on by the organization, reduced by the expenses and deductions directly connected with the unrelated trade or business.

(b) The following amounts are excluded from unrelated business taxable income:

1. All dividends, interest, payments with respect to securities loans (as defined in 26 U.S.C. § 512(a)(5)), and annuities; together with all expenses and deductions directly connected with such income.

2. All royalties (including overriding royalties) whether measured by production or by gross or taxable income from the property; together with all expenses and deductions directly connected with such income.

3. All rents from real property, together with rents from personal property if the rents from such personal property are incidental to the rental of the real property. If more than 50% of the total rents received are attributable to the rental of the personal property or if the amount of rents to be received is dependent in whole or in part upon the income or profits derived by any person from such property (other than a fixed percentage or percentages of sales or receipts); then such rents shall not be excluded from unrelated business taxable income. If any rents are excluded from unrelated business taxable income, then any expenses or deductions directly connected with such income shall also be excluded.

4. In the case of debt-financed property (as defined in 26 U.S.C. § 514), unrelated business taxable income will include the amount ascertained under 26 U.S.C. § 514(a)(1) less the deductions allowed by 26 U.S.C. § 514(a)(2).

5. All gains or losses from the sale, exchange or other disposition of property, other than stock in trade or property held primarily for sale to customers in the ordinary course of the trade or business, together with all expenses and deductions directly connected with such income.

6. The net operating loss deduction allowed by § 40-18-35.1.

7. Income derived from research performed for the United States government, or any of its agencies or instrumentalities, and any state or political subdivision thereof; together with all expenses and deductions directly connected with such income.

8. In the case of a college, university or hospital, all income from research performed for any person, together with all expenses and deductions directly connected with such income.

9. In the case of organizations operated primarily for the purpose of carrying on research, the results of which are freely available to the general public, all income derived from research performed for any person, together with all expenses and deductions directly connected with such income.

10. In the case of any organization subject to tax on its unrelated business taxable income under § 40-18-32, there will be allowed a deduction for charitable contributions as provided in § 40-18-35, but not in excess of 10% of the unrelated business taxable income computed without regard to this subdivision.

11. In the case of a trust described in 26 U.S.C. § 511(b), the deduction allowed for contributions (whether or not directly connected with the carrying on of a trade or business) shall be allowed, and any distribution made to a beneficiary described in 26 U.S.C. § 170 shall be considered to be a contribution. The deduction shall not exceed 10% of the unrelated business taxable income computed without regard to the deduction allowed by this subdivision.

12. Except from the purposes of computing the net operating loss deduction for section 6. above, there shall be allowed a specific deduction of \$1,000.00. In the case of a diocese, province of a religious order, or a convention or association of churches, there shall also be allowed with respect to each parish, individual church, district or other local unit, a specific deduction of \$1,000.00 or the gross income derived from any unrelated trade or business regularly carried on by such local unit, whichever is the lesser.

13. [RESERVED].

14. [RESERVED].

(c) 1. In the case of an organization described in § 40-18-32(a)(5), the term "unrelated business taxable income" means the gross income (excluding any exempt function income) less the deductions and expenses directly

connected with such income and with the deductions specified in sections 6., 10., 11. and 12. of subparagraph (b) above.

2. The term "exempt function income" means the gross income from dues, fees, charges, or similar amounts paid by members of the organization as consideration for providing such members or their dependents or guests goods, facilities, or services in furtherance of the purposes constituting the basis of the exemption of the organization to which such income is paid. Exempt function income also includes all income set aside by the organization for the benefit of an organization described in § 40-18-32(a)(2), if such contribution is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

(d) An organization which receives "unrelated business taxable income" from sources within and without Alabama shall determine the amount of such income attributable to Alabama by using the apportionment and allocation rules of Reg. 810-3-31-.02.

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